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Ms Susan Phillip
Director Adjudication Branch
Australian Competition & Consumer Commission
adjudication@acc.gov.au

Dear Ms Phillip,

We feel it necessary to respond FQ's latest submission dated 11/11/2011. The ACCC is already aware of evidence with regards to FQ's false bulk purchasing claims, and false claims regarding Q logo charges.

We mainly want to focus on FQ's claims regarding quality, lower prices and the claim that suppliers have dealt unconscionably with clubs.

1. **Quality**

a. **Testing/Examination/Inspection of licensed goods**

We would firstly like to respond to FQ's claim that they "work actively to ensure minimum quality standards". FQ state that they do not require suppliers who have been previously part of the license agreement to produce **further** samples. This suggests that FQ has previously tested and/or examined and consequently approved the goods of licensed suppliers. We assume that such a process would be similar to the process stated in FQ's submission dated 12 July 2011, where FQ stated that: *"with each application, a range of apparel and balls were submitted for assessment of quality and price"*.

As a current supplier within the license scheme, we have NEVER had our goods tested or inspected by FQ for the purpose of joining the scheme. **FQ did not ask to inspect any of our goods upon joining the scheme**, and FQ did not ask us to submit *"a range of apparel and balls"* upon approving the renewal of our license in 2010. FQ have never provided any documents to show that they carry out any inspections prior to awarding licenses.

As FQ do not test the goods of licensed suppliers, it goes without saying that FQ does not have any criteria in which goods are to be tested to, and we are certainly not aware of any criterion that is used to assess quality.

b. **Addressing any complaints from the public**

FQ have stated that quality is monitored most effectively by the end user, and that Clubs are encouraged to lodge a complaint with FQ with regards to poor quality from a licensed supplier. FQ claim that they have been involved *"on several occasions in providing assistance to its members in reaching a satisfactory conclusion on product quality issues"*.

Yet throughout the ACCC investigation process, FQ has only been able to point to one example where they allege that they became involved in a product quality issue. If this is the only example that FQ can point to over the many years of running the scheme, then the degree of FQ's involvement in monitoring quality must be questioned.

It is simply the case that the clubs resolve any issues regarding quality with the suppliers themselves (as it should be the case). FQ is not involved in monitoring quality and throughout our years of our involvement within the scheme, we have not heard of FQ encouraging any Club to lodge a complaint with them. There is no recognised system for making a complaint, and no complaints procedure. The fact of the matter is that Clubs simply contact the supplier, and the issue is resolved between the supplier and the club.

As a supplier, if any of our goods are faulty, we always replace them or issue a refund. We have done this in the past as we do not want to lose the business of Club, and any supplier (whether licensed or unlicensed) would do the same. Furthermore, it is our legal obligation to provide goods that are *'fit for the purpose'*. To do otherwise is illegal and consumers have legal protection.

c. Quality has never been a consideration

As discussed above, FQ do not monitor the quality of our goods. FQ's only consideration has been the payment of the license fee and this seems to be the only criteria that FQ takes into account.

The letters from FQ to existing AND new licensees simply asks the applicant to *"complete the attached agreement"*. There is no mention of quality standards or any requirement to supply samples to FQ.

Quality was one of the major arguments that FQ put forward in the original notification to the ACCC (on 28 April 2008), with FQ stating that:

"The Licence Program was introduced largely to ensure that the quality of the Teamwear met a certain minimum standard".

As stated above, there are no minimum quality standards. Given that FQ placed significant reliance on this argument in their application for immunity, the above casts serious doubt of the legitimacy of the scheme

2. FQ's claim regarding lower prices

FQ have not demonstrated how the license scheme has contributed towards lower prices. In fact looking at the submissions on the ACCC public register it would appear that there is a belief by some clubs and suppliers that prices would drop substantially in the absence of a licensing scheme.

It is true that prices have come down in recent years in Queensland. However it is also true that the prices in the rest of Australia have also come down and this is in the absence of any licensing scheme

In their latest submission, FQ wrote:

"Clearly, the guarantee of predictable demand allows licensed suppliers to negotiate with manufacturers for best prices on the back of reasonable volume. If the marketing program was not operating the current suppliers would undoubtedly be more cautious about ordering in volume and best pricing could well be lost".

FQ appear to indicate that by entering the license scheme suppliers can expect reasonable demand for their products. This means that they can negotiate lower prices from manufacturers based on higher volumes.

We wish to point out that what makes prices fall is **competition**. It is for this very reason that the role of the ACCC is to foster and encourage competition.

More importantly the above statement by FQ goes against what FQ themselves believe to be the case. The following is an extract from an email sent by Geoff Foster in 2009:

*"It is most important that you confirm to me that at all times, I made it very clear that committing to a Licence was a commercial decision for the participants to make. **Further to that I told all those that expressed interest that our view was and remains that the market will not sustain thirteen licensees**".*

FQ appear to have contradicted themselves. They say in their latest submission that being part of the license scheme gives suppliers guarantees of predictable demand so that they can negotiate best prices on the back of reasonable volume. Yet the email from Geoff Foster, he states that FQ do not believe the market can sustain 13 licensees. If the market cannot sustain 13 licensees then there cannot be predictable demand based on reasonable volume. All it means is that there is insufficient business in the Queensland market for 13 suppliers. Clearly FQ have known for several years that the market will not sustain the number of licensees that they have approved. How then did they expect suppliers to negotiate best prices with the manufacturers? In fact the evidence shows the complete opposite to what FQ have stated in their most recent submission. **If there is insufficient sales volume to sustain 13 suppliers, then these suppliers cannot negotiate best prices based on reasonable volume.** Therefore FQ have admitted that they have created an environment that will not allow suppliers to negotiate best prices with the manufacturers. This is the complete opposite of what they are saying now. At face value it appears that FQ cannot even tell a consistent story.

3. FQ's claims of clubs being dealt with unconscionably

FQ have expressed concern that Clubs are being "abused" through the use of 'sponsorship agreements'. This argument is ridiculous, and it is the first time that FQ have ever raised such an issue.

Contracts are common place in all industries, and this market is no different. Clubs **decide** to enter into such agreements, and in our experience, it is the Clubs that request the agreements due to the great benefits involved. From such agreements, the clubs receives a large amount of sponsorship, and certainty of price and supply. Such benefits **cannot** be achieved without sponsorship agreements. For example, our sponsorship agreements have included free of charge match jerseys for every registered player in the club. Our sponsorship agreements have also included substantial amounts of money for the purchase of apparel and equipment.

We would be happy to send the ACCC many examples of emails where Clubs have requested sponsorship agreements. We would also be happy to supply the ACCC examples of Club sponsorship arrangements, as well as references from all clubs contracted with us as to the great benefits of a sponsorship agreement.

To suggest that such contracts 'take advantage of clubs' clearly demonstrates FQ's lack of understanding.

Furthermore, the Clubs do have safeguards with regards to price and supply, and this is why clubs entered into the agreements.

Importantly, FQ have NEVER raised any issue with our 'sponsorship agreements' and we are not aware of any supplier that has been questioned by FQ over 'sponsorship agreements'. Many suppliers, as well as ourselves have been using sponsorship agreements for many years.

If FQ did have "serious concerns", it would have at least raised them before now, and would have raised them with suppliers and not for the first time through an ACCC investigation process.

4. The alternative to a marketing scheme

Given the numbers of football players in Queensland (74,340) it is clear that a small percentage increase of player registration (eg \$3) would cover the money received by FQ through the scheme. This would be in addition to the large amounts of government funding received by FQ.

In addition there would be a huge saving on the costs of administrating the license scheme.

5. Conclusion

Third line forcing is an illegal activity. The ACCC grants immunity from prosecution where the ACCC is satisfied that the public benefit outweighs the public detriment. We believe the ACCC has sufficient evidence to see that this is not the case in Queensland and that is the reason that a draft notice was issued.

The FQ license scheme appears to be about raising money the easiest way possible. Matters of quality and prices to clubs do not appear to be major considerations. If a free market was allowed to operate, competition would bring the prices down and improve quality.

If a free market can operate successfully in the rest of Australia (except Victoria) without any problems, it can clearly operate in Queensland too.

Yours faithfully,

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